



IS THERE A LEVEL PLAYING FIELD AT INQUESTS?

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GRESHAM
COLLEGE

Equality of arms

- Adequate time and opportunity to prepare the case
- Access to the evidence
- Opportunity to call witnesses and question the other side's witnesses
- Opportunity to make arguments
- Neither side at a disadvantage compared to the other

What does equality of arms require?

- Do both sides have to have legal representation?
- What should each side be required to disclose to the other?

Equality of arms and inquests

- The theory: an inquest is “non-adversarial” and “inquisitorial”.
- There are no parties and no “winners” or “losers”.
- But is this the reality?

The position before 2001

- No legal aid and no right to disclosure.
- The 1995 Marchioness inquest: Lord Chancellor makes a one-off payment to the victims' lawyers.

An illustration: Ann Power and the 1998 inquest into the death of Onese Power

“The claimant did not have the benefit of legal representation at the inquest into the death of her husband. Her request for disclosure of statements in advance of the inquest had been refused.”

Nicola Davies J, *Power v Her Majesty's Senior Coroner for Inner North London* [2017] EWHC 3117 (Admin)

Strasbourg weighs in

- *McCann v United Kingdom* (1995) 21 EHRR 97 (the Death on the Rock case): recognition of the state's duty under Article 2 to investigate a state-related killing.
- *Jordan v United Kingdom* (2003) 37 EHRR 2: recognition of the right of the bereaved family to participate. Significant criticisms of the inquest process.

The introduction of legal aid

- November 2001: legal aid for inquests is available for the first time –but only exceptionally, and with no power to waive the means test.
- *Khan v Secretary of State for Health* [2003] EWCA Civ 1129: recognition that Article 2 may in some cases require a waiver of the means test.
- December 2003: Legal Services Commission given power to waive the means test. But funding remains exceptional.

Criticisms

- Numerous reports and reviews have called for wider availability of legal aid for bereaved families. For example:
 - 1999: Stephen Lawrence Inquiry
 - 2004: Joint Committee on Human Rights
 - 2007: Baroness Corston's report into women in prison
 - 2015: Harris Review into deaths of 18-24 year olds in custody
 - 2016: Report of the Chief Coroner, Peter Thornton QC
 - 2017: Angiolini Review into deaths and serious incidents in police custody
 - 2017: Bishop James Jones' report on the Hillsborough families

A full timeline can be found at <https://www.inquest.org.uk/legal-aid-for-inquests-timeline>

One step forward, two steps back

- Section 51 of the Coroners and Justice Act 2009 would have provided for funding for bereaved families where a person dies in custody, or on active service in the military.
- But it was repealed without ever being brought into force. And it would not have abolished the means test.
- The 2009 Act did make some improvements to disclosure.
- The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) subsequently made severe cuts to legal aid.

Bereaved families without legal aid

"We had to do everything ourselves. We had no lawyer at the inquest. Those three weeks were the most terrifying thing I've ever done in my life. I had to cross examine witnesses, it was absolutely terrifying, and they had lawyers. There needs to be a level playing field; a family member should never be put through that."

-Bereaved family member quoted in INQUEST's February 2019
Legal Aid Briefing

<https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=a1ec7dcc-9ed6-405c-8af6-2639438e8d00>

Bereaved families without legal aid

"The lack of funding meant I had to cross-examine the pathologist myself on my dead daughter's body – something no parent should ever have to do."

Liz de Oliveira, bereaved family member quoted in INQUEST's September 2020 evidence to the Justice Select Committee
<https://committees.parliament.uk/writtenevidence/11920/pdf/>

Where should we go from here?

- Automatic, non-means-tested legal aid in Article 2 inquests
- Discretionary, non-means-tested legal aid in other inquests